

Senate Study Bill 1141

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT
OF INSPECTIONS AND
APPEALS BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring record checks of persons being employed by a
2 hospital, health care facility, or other care provider and
3 providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1247DP 81
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1 1 Section 1. Section 135B.34, Code 2005, is amended by
1 2 striking the section and inserting in lieu thereof the
1 3 following:
1 4 135B.34 EMPLOYMENT RECORD CHECKS.
1 5 1. a. For the purposes of this section, unless the
1 6 context otherwise requires:
1 7 (1) "Employed" or "employment" means an individual is
1 8 paid, by a hospital or a contractor or any other person, to
1 9 provide direct or indirect care, treatment, or other service
1 10 in a facility, service, or program operated by the hospital.
1 11 (2) "Record of founded child or dependent adult abuse"
1 12 means data has been entered in the child or dependent abuse
1 13 registry establishing a record of a decision or finding that
1 14 the person has abused a child or a dependent adult.
1 15 b. For the purposes of this section, the date a record of
1 16 founded child or dependent abuse was entered shall either be
1 17 the date of the notice that was provided to the person by the
1 18 department of human services regarding the results of the
1 19 investigation or assessment made concerning a report of abuse
1 20 or the date of the decision upholding the determination in any
1 21 final appeal made to correct or expunge the record under
1 22 section 235A.19 or 235B.10, whichever is later. If a record
1 23 of founded child or dependent adult abuse was entered at some
1 24 point but, in accordance with section 235A.18, 235A.19,
1 25 235B.9, or 235B.10, was later determined to be unfounded,
1 26 sealed or expunged, or otherwise removed from registry access,
1 27 the employability, evaluation, and employee reporting
1 28 requirements of this section are not applicable to the
1 29 prospective employee or employee with regard to that record.
1 30 2. Prior to the initial employment of a person in a
1 31 hospital, the hospital shall request that the department of
1 32 public safety perform a criminal history check and the
1 33 department of human services perform child and dependent adult
1 34 abuse record checks of the person in this state. The hospital
1 35 shall inform all persons prior to employment regarding the
2 1 performance of the record checks and shall obtain, from the
2 2 persons, a signed acknowledgement of the receipt of the
2 3 information. Additionally, a hospital shall include the
2 4 following inquiry in an application for employment: "Do you
2 5 have a record of founded child or dependent adult abuse or
2 6 have you ever been convicted of a crime, in this state or any
2 7 other state?"
2 8 3. a. If through either the criminal history or child or
2 9 dependent adult abuse record check or by self-admission on the
2 10 application or at another time it is determined that within
2 11 the five-year period prior to the date of application the
2 12 person was convicted of a felony under a law of any state or
2 13 had a record of founded child or dependent adult abuse
2 14 entered, the person shall not be employed in the hospital.
2 15 b. If the person has been convicted of a crime other than

2 16 a felony, the felony conviction occurred more than five years
2 17 prior to the date of application, or the record of founded
2 18 child or dependent adult abuse was entered more than five
2 19 years prior to the date of application, the department of
2 20 human services shall, upon the hospital's request, perform an
2 21 evaluation to determine whether the crime or founded abuse
2 22 record warrants prohibition of the person's employment in the
2 23 hospital. The evaluation shall be performed in accordance
2 24 with procedures adopted for this purpose by the department of
2 25 human services.

2 26 c. If the person has been convicted of a simple
2 27 misdemeanor and the conviction occurred more than five years
2 28 prior to the date of the application, in lieu of requesting an
2 29 evaluation to be performed by the department of human services
2 30 as provided in paragraph "b", the hospital may perform an
2 31 evaluation to determine whether the offense warrants
2 32 prohibition of the person's employment. In performing the
2 33 evaluation, the hospital shall apply the criteria adopted by
2 34 the department of human services for performing employability
2 35 evaluations. The hospital has final authority in determining
3 1 whether prohibition of the person's employment is warranted.

3 2 d. If a person owns or operates more than one hospital or
3 3 the hospital provides programs in more than one location, and
3 4 an employee of one of such hospitals is transferred to another
3 5 such hospital or program location without a lapse in
3 6 employment, the hospital is not required to request additional
3 7 criminal and child and dependent adult abuse record checks of
3 8 that employee.

3 9 4. In an evaluation performed by the department of human
3 10 services, the department shall consider the nature and
3 11 seriousness of the crime or founded child or dependent adult
3 12 abuse in relation to the position sought or held, the time
3 13 elapsed since the commission of the crime or founded abuse,
3 14 the circumstances under which the crime or founded abuse was
3 15 committed, the degree of rehabilitation, the likelihood that
3 16 the person will commit the crime or founded abuse again, and
3 17 the number of crimes or founded abuses committed by the person
3 18 involved. The department of human services has final
3 19 authority in determining whether prohibition of the person's
3 20 employment is warranted.

3 21 5. If an evaluation performed by the department of human
3 22 services is requested in accordance with subsection 3, a
3 23 person shall not be employed in a hospital licensed under this
3 24 chapter unless the evaluation has been performed by the
3 25 department. If the department of human services determines
3 26 from the evaluation that the person has committed a crime or
3 27 has a record of founded child or dependent adult abuse that
3 28 warrants prohibition of employment, the person shall not be
3 29 employed in a hospital licensed under this chapter.

3 30 6. If an employee has a criminal conviction or a record of
3 31 founded child or dependent adult abuse that is entered
3 32 following employment with a hospital, the employee shall
3 33 notify the hospital of such information within forty-eight
3 34 hours of the date the criminal conviction or founded abuse
3 35 record is entered. The hospital shall take steps to verify
4 1 the information within forty-eight hours of notification. The
4 2 requirements of subsections 3, 4, and 5 regarding the
4 3 employee's employability and evaluations shall be applied to
4 4 determine whether prohibition of the employee's continued
4 5 employment is warranted. An employee's failure to timely
4 6 notify the hospital as required by this subsection is a
4 7 serious misdemeanor.

4 8 7. If a hospital receives credible information regarding
4 9 the entry of a criminal conviction of an employee or a record
4 10 of founded child or dependent adult abuse following employment
4 11 from a person other than the employee and the employee has not
4 12 notified the hospital as required by subsection 6, the
4 13 hospital shall take steps to verify the information within
4 14 forty-eight hours of receipt of the credible information. The
4 15 requirements of subsections 3, 4, and 5 regarding the
4 16 employee's employability and evaluations shall be applied to
4 17 determine whether prohibition of the employee's continued
4 18 employment is warranted.

4 19 8. The hospital shall notify the county attorney for the
4 20 county in which the hospital is located of any violation or
4 21 failure by an employee to timely notify the hospital as
4 22 required by subsection 6 or 7.

4 23 9. A hospital licensed in this state may access the single
4 24 contact repository established by the department of
4 25 inspections and appeals pursuant to section 135C.33 as
4 26 necessary to comply with this section.

4 27 Sec. 2. Section 135C.33, Code 2005, is amended to read as
4 28 follows:
4 29 135C.33 CHILD OR DEPENDENT ADULT ABUSE INFORMATION AND
4 30 CRIMINAL RECORDS == EVALUATIONS == APPLICATION TO OTHER
4 31 PROVIDERS.
4 32 1. a. For the purposes of this section, unless the
4 33 context otherwise requires:
4 34 (1) "Employed" or "employment" means an individual is
4 35 paid, either by an employer or a contractor or any other
5 1 person, to provide direct or indirect care, treatment, or
5 2 other service in a facility, service, or program operated by
5 3 the employer.
5 4 (2) "Employer" means a health care facility licensed under
5 5 this chapter or a service provider listed in subsection 6.
5 6 (3) "Record of founded child or dependent adult abuse"
5 7 means data has been entered in the child or dependent abuse
5 8 registry establishing a record of a decision, finding, or
5 9 other determination that the person has abused a child or a
5 10 dependent adult.
5 11 b. For the purposes of this section, the date a record of
5 12 founded child or dependent abuse was entered shall either be
5 13 the date of the notice that was provided to the person by the
5 14 department of human services regarding the results of the
5 15 investigation or assessment made concerning a report of abuse
5 16 or the date of the decision upholding the determination in any
5 17 final appeal made to correct or expunge the record under
5 18 section 235A.19 or 235B.10, whichever is later. If a record
5 19 of founded child or dependent adult abuse was entered at some
5 20 point but, in accordance with section 235A.18, 235A.19,
5 21 235B.9, or 235B.10, was later determined to be unfounded,
5 22 sealed or expunged, or otherwise removed from registry access,
5 23 the employability, evaluation, and employee reporting
5 24 requirements of this section are not applicable.
5 25 2. ~~Beginning July 1, 1997, prior~~ Prior to the initial
5 26 employment of a person in a facility by an employer, the
5 27 facility employer shall request that the department of public
5 28 safety perform a criminal history check and the department of
5 29 human services perform a child abuse and dependent adult abuse
5 30 record check checks of the person in this state. In addition,
5 31 the facility may request that the department of human services
5 32 perform a child abuse record check in this state. Beginning
5 33 July 1, 1997, a facility An employer shall inform all persons
5 34 prior to employment regarding the performance of the records
5 35 record checks and shall obtain, from the persons, a signed
6 1 acknowledgment of the receipt of the information.
6 2 Additionally, a facility an employer shall include the
6 3 following inquiry in an application for employment: "Do you
6 4 have a record of founded child or dependent adult abuse or
6 5 have you ever been convicted of a crime, in this state or any
6 6 other state?" If
6 7 3. a. If through either the criminal history or child or
6 8 dependent adult abuse record check or by self-admission on the
6 9 application or at another time it is determined that within
6 10 the five-year period prior to the date of application the
6 11 person has been was convicted of a crime felony under a law of
6 12 any state or has had a record of founded child or dependent
6 13 adult abuse, the department of human services shall, upon the
6 14 facility's request, perform an evaluation to determine whether
6 15 the crime or founded child or dependent adult abuse warrants
6 16 prohibition of employment in the facility entered, the person
6 17 shall not be employed in a facility or service operated by an
6 18 employer.
6 19 b. Except as provided in paragraph "c", if the person has
6 20 been convicted of a crime other than a felony, the felony
6 21 conviction occurred more than five years prior to the date of
6 22 application, or the record of founded child or dependent adult
6 23 abuse was entered more than five years prior to the date of
6 24 application, the department of human services shall, upon the
6 25 employer's request, perform an evaluation to determine whether
6 26 the crime or founded abuse record warrants prohibition of the
6 27 person's employment in the facility or to provide direct
6 28 services. The evaluation shall be performed in accordance
6 29 with procedures adopted for this purpose by the department of
6 30 human services.
6 31 c. If the person has been convicted of a simple
6 32 misdemeanor and the conviction occurred more than five years
6 33 prior to the date of the application, in lieu of requesting an
6 34 evaluation to be performed by the department of human services
6 35 as provided in paragraph "b", the employer may perform an
7 1 evaluation to determine whether the offense warrants
7 2 prohibition of the person's employment. In performing the

7 3 evaluation, the employee shall apply the criteria adopted by
7 4 the department of human services for performing employability
7 5 evaluations. The employer has final authority in determining
7 6 whether prohibition of the person's employment is warranted.

7 7 d. If a person an employer owns or operates more than one
7 8 facility, service, or program, and an employee of one of such
7 9 facilities facility, service, or program is transferred to
7 10 another such facility, service, or program without a lapse in
7 11 employment, the facility employer is not required to request
7 12 additional criminal and child and dependent adult abuse record
7 13 checks of that employee.

7 14 2. If the department of public safety determines that a
7 15 person has committed a crime and is to be employed in a
7 16 facility licensed under this chapter, the department of public
7 17 safety shall notify the licensee that an evaluation, if
7 18 requested by the facility, will be conducted by the department
7 19 of human services to determine whether prohibition of the
7 20 person's employment is warranted. If a department of human
7 21 services child or dependent adult abuse record check shows
7 22 that the person has a record of founded child or dependent
7 23 adult abuse, the department of human services shall inform the
7 24 licensee that an evaluation, if requested by the facility,
7 25 will be conducted to determine whether prohibition of the
7 26 person's employment is warranted.

7 27 3. 4. In an evaluation, performed by the department of
7 28 human services, the department shall consider the nature and
7 29 seriousness of the crime or founded child or dependent adult
7 30 abuse in relation to the position sought or held, the time
7 31 elapsed since the commission of the crime or founded child or
7 32 dependent adult abuse, the circumstances under which the crime
7 33 or founded child or dependent adult abuse was committed, the
7 34 degree of rehabilitation, the likelihood that the person will
7 35 commit the crime or founded child or dependent adult abuse
8 1 again, and the number of crimes or founded child or dependent
8 2 adult abuses committed by the person involved. The department
8 3 of human services, the department has final authority in
8 4 determining whether prohibition of the person's employment is
8 5 warranted.

8 6 4. 5. A If an evaluation performed by the department of
8 7 human services is requested in accordance with subsection 3, a
8 8 person shall not be employed in a facility licensed under this
8 9 chapter, service, or program operated by an employer unless an
8 10 the evaluation has been performed by the department of human
8 11 services, as required by this section. If the department of
8 12 human services determines from the evaluation that the person
8 13 has committed a crime or has a record of founded child or
8 14 dependent adult abuse which that warrants prohibition of
8 15 employment, the person shall not be employed in a facility
8 16 licensed under this chapter, service, or program operated by
8 17 an employer.

8 18 5. 6. Beginning July 1, 1998, this This section shall
8 19 apply applies to prospective employees of all of the following
8 20 service and program providers, if the provider is regulated by
8 21 the state or receives any state or federal funding:

8 22 a. An employee of a homemaker, home-health aide, home=
8 23 care aide, adult day services, or other provider of in-home
8 24 services if the employee provides direct services to
8 25 consumers.

8 26 b. An employee of a hospice, if the employee provides
8 27 direct services to consumers.

8 28 c. An employee who provides direct services to consumers
8 29 under a federal home and community-based services waiver.

8 30 d. An employee of an elder group home certified under
8 31 chapter 231B, if the employee provides direct services to
8 32 consumers.

8 33 e. An employee of an assisted living program certified
8 34 under chapter 231C, if the employee provides direct services
8 35 to consumers.

9 1 In substantial conformance with the provisions of this
9 2 section, prior to the employment of such an employee, the
9 3 provider shall request the performance of the criminal and
9 4 dependent adult abuse record checks and may request the
9 5 performance of the child abuse record checks. The provider
9 6 shall inform the prospective employee and obtain the
9 7 prospective employee's signed acknowledgment. The department
9 8 of human services shall perform the evaluation of any criminal
9 9 record or founded child or dependent adult abuse record and
9 10 shall make the determination of whether a prospective employee
9 11 of a provider shall not be employed by the provider.

9 12 6. 7. a. The department of inspections and appeals, in
9 13 conjunction with other departments and agencies of state

9 14 government involved with criminal history and abuse registry
9 15 information, shall establish a single contact repository for
9 16 ~~facilities and other providers~~ employers to have electronic
9 17 access to data to perform background checks for purposes of
9 18 employment, as required of the ~~facilities and other providers~~
9 19 ~~employers~~ under this section.
9 20 b. The department may access the single contact repository
9 21 for any of the following purposes:
9 22 (1) To verify data transferred from the department's ~~nurse~~
9 23 ~~aid~~ direct care worker registry to the repository.
9 24 (2) To conduct record checks of applicants for employment
9 25 with the department.
9 26 8. If an employee has a record of founded child or
9 27 dependent adult abuse or a criminal conviction that is entered
9 28 following employment with an employer, the employee shall
9 29 notify the employer of such information within forty-eight
9 30 hours of the date the criminal conviction or founded abuse
9 31 record is entered. The employer shall take steps to verify
9 32 the information within forty-eight hours of notification. The
9 33 requirements of subsections 3, 4, and 5 regarding the
9 34 employee's employability and evaluations shall be applied to
9 35 determine whether the employee's continued employment is
10 1 warranted. An employee's failure to timely notify the
10 2 employer as required by this subsection is a serious
10 3 misdemeanor.
10 4 9. If an employer receives credible information regarding
10 5 the entry of a criminal conviction of an employee or a record
10 6 of founded child or dependent adult abuse following employment
10 7 from a person other than the employee and the employee has not
10 8 notified the employer as required by subsection 8, the
10 9 employer shall take steps to verify the information within
10 10 forty-eight hours of receipt of the credible information. The
10 11 requirements of subsections 3, 4, and 5 regarding the
10 12 employee's employability and evaluations shall be applied to
10 13 determine whether the employee's continued employment is
10 14 warranted.
10 15 10. The employer shall notify the county attorney for the
10 16 county in which the employer is located of any violation or
10 17 failure by an employee to timely notify the employer as
10 18 required by subsection 8 or 9.

10 19 EXPLANATION
10 20 This bill requires record checks of persons being employed
10 21 by a hospital, health care facility, or other care providers.
10 22 Code section 135B.34 currently allows a hospital to utilize
10 23 the single contact repository maintained by the department of
10 24 inspections and appeals in order to perform criminal and abuse
10 25 registry checks of prospective and current employees. The
10 26 bill makes the record checks mandatory, to be performed on
10 27 prospective employees prior to employment. If through the
10 28 record check or self-disclosure it is determined that the
10 29 prospective employee has, within the five-year period
10 30 preceding the date of application, been convicted of a felony
10 31 crime or had a record of founded child or dependent adult
10 32 abuse entered, the person's employment is prohibited. For a
10 33 crime other than a felony committed at any time, or a felony
10 34 crime or record of founded abuse committed or entered prior to
10 35 that five-year period, upon request of the hospital, the
11 1 department of human services is required to perform an
11 2 evaluation to determine whether the crime or founded abuse
11 3 warrants prohibition of the person's employment. However, if
11 4 the person has been convicted of a simple misdemeanor and the
11 5 conviction occurred more than five years prior to the date of
11 6 the application, in lieu of requesting an evaluation to be
11 7 performed by the department of human services, the hospital
11 8 may perform an evaluation to determine whether the offense
11 9 warrants prohibition of the person's employment. The hospital
11 10 must apply the evaluation criteria adopted by the department
11 11 of human services.
11 12 The bill defines the term "employed" or "employment" to
11 13 mean an individual is paid, by the hospital (or other employer
11 14 addressed by the bill) or a contractor or any other person, to
11 15 provide direct or indirect care, treatment, or other service
11 16 in a facility, service, or program operated by the hospital
11 17 (or other employer).
11 18 The bill defines the term "record of founded child or
11 19 dependent adult abuse" to mean data has been entered in the
11 20 child or dependent abuse registry establishing a record of a
11 21 decision or finding that the person has abused a child or a
11 22 dependent adult. The bill provides that the entry date is the
11 23 date of the notice provided to the person by the department of
11 24 human services regarding the results of the investigation or

11 25 assessment made concerning a report of abuse or the date of
11 26 the decision upholding the determination in any final appeal
11 27 made to correct or expunge the record under Code section
11 28 235A.19 or 235B.10, whichever is later. The bill also
11 29 provides that if founded abuse information was entered on a
11 30 registry at some point but was later determined to be
11 31 unfounded, sealed or expunged, or otherwise removed from
11 32 registry access, the employability, evaluation, and reporting
11 33 requirements are not applicable.
11 34 If a current employee has a criminal conviction or a record
11 35 of founded abuse that is entered following employment, the
12 1 employee is required to notify the employer within 48 hours of
12 2 the adjudication or receiving the notice. The employee's
12 3 failure to do so is a crime punishable as a serious
12 4 misdemeanor; the employer is required to notify the county
12 5 attorney. Within 48 hours of being notified by the employee
12 6 or receiving credible information, the employer must take
12 7 steps to verify the information provided by the employee. The
12 8 same employability and evaluation requirements apply as are
12 9 applicable prior to a person's employment.
12 10 Current law in Code section 135C.33 requires criminal and
12 11 dependent adult record checks of prospective health care
12 12 facility employees employed beginning July 1, 1997, and allows
12 13 the facility to request a child abuse registry check. "Health
12 14 care facility" means a residential care facility, a nursing
12 15 facility, an intermediate care facility for persons with
12 16 mental illness, or an intermediate care facility for persons
12 17 with mental retardation. As of July 1, 1998, current law also
12 18 requires the same record checks for prospective employees of
12 19 the following types of service and program providers, if the
12 20 provider is regulated by the state or receives state or
12 21 federal funding and the employee provides direct services:
12 22 homemaker, home=health aide, home=care aide, adult day
12 23 services, or other provider of in=home services; federal home
12 24 and community=based services waiver providers funded under
12 25 Medicaid; elder group homes; and assisted living programs.
12 26 The bill defines the term "employer" to incorporate all of the
12 27 listed facilities, services, and programs.
12 28 The bill amends Code section 135C.33 by requiring the same
12 29 criminal and child and dependent adult abuse registry checks
12 30 to be performed for prospective employees covered under Code
12 31 section 135C.33 as for hospitals and applying the same
12 32 employability and evaluation requirements as the bill requires
12 33 for hospital employees.
12 34 LSB 1247DP 81
12 35 jp:rj/gg/14.1